



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 31, 1993

Mr. Charles Karakashian, Jr.
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR93-770

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ We assigned your request ID# 22848.

The Texas Department of Public Safety (the "department") has received a request for certain information that Guardian Interlock Systems ("Guardian") has provided the department in connection with certification of an ignition interlock device. You object to release of some of the requested information, specifically, "documentation submitted to you by the company that satisfies the state that this is not a new device that requires testing."² You seek to withhold this information, which you have submitted to us for review, under sections 552.104 and 552.110 of the act.

Pursuant to section 552.305 of the Government Code, we have received a response from Guardian. Guardian claims that sections 552.104 and 552.110 except the

¹We note that the Seventy-Third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²The requestor seeks additional information that you do not address. We assume that this information has been or will be made available to the requestor, to the extent that it exists. *See* Open Records Decision No. 363 (1983).

submitted information from required public disclosure.³ Section 552.110 protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. The respondent claims that the information submitted to us for review constitutes "trade secrets." Accordingly, we need only address the "trade secrets" branch of section 552.110.

The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. *It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, . . . [but] a process or device for continuous use in the operation of the business. . . .* [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management. [Emphasis added.]

RESTATEMENT OF TORTS § 757, cmt. b (1939). If a governmental body takes no position with regard to the application of the "trade secrets" branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5.⁴

³Section 552.104 is designed to protect only a governmental body's interests. *See* Open Records Decision No. 541 (1990) at 4-5. Thus, the respondent has no standing to assert section 552.104.

⁴The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty

We have examined the information submitted to us for review. We conclude that Guardian has made a *prima facie* case that the requested information constitutes trade secrets. Accordingly, we conclude that the requested information may be withheld from required public disclosure under the trade secrets branch of section 552.110 of the act. As we resolve this matter under section 552.110, we need not address the applicability of section 552.104 at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Open Government Section

SLG/GCK/rho

Ref.: ID# 22848
ID# 22898
ID# 22967

cc: Mr. Richard Freund
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with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757, cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2, 306 at 2 (1982); 255 (1980) at 2.